WONG POT HENG & ANOR.

v.

KERAJAAN MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[ORIGINATING SUMMONS NO. R1-24-91-1991]
9 MAY 1992

CONSTITUTIONAL LAW: *Emergency Powers - Yang Di Pertuan Agong on advice of Cabinet made amendments to Regulations vide Essential (Protection of Depositors) (Amendment) Regulations 1991 - Both plaintiffs obtained order of Supreme Court to rank equally with depositors of CCB - Whether the new regulation ousts decision of Supreme Court - Amending Regulations were made retrospective - Whether power given to Yang Di Pertuan Agong to make amending Regulations with retrospective effect - Section 2 Emergency (Essential Powers) Act 1979 - Rights of plaintiffs pursuant to acquired Supreme Court decision - Whether amended regulation deprives plaintiffs of the rights acquired by Supreme Court decision.*

Both the plaintiffs have filed this action against the Government of Malaysia alleging that the Government (defendants) has acted *mala fide* advising the Yang Di Pertuan Agong to pass the amending Regulations *vide* the Essential (Protection of Depositors) (Amendment) Regulations 1991 and also that on the priority of payments, the new reg. 9B(1)(f) ousts the decision of the Supreme Court given on 25 May 1990 wherein the manager (who includes a receiver) is given power to pay depositors in preference to the plaintiffs. The plaintiffs have also claimed that part of the amending Regulations, regs. 9B and 13(2) are invalid because those Regulations were made to have retrospective effect contrary to s. 2 of the Emergency (Essential Powers) Act 1979.

The plaintiffs' joint application to the High Court, Kuala Lumpur was for a declaration that the amending Regulations is void and of no effect and alternatively that the said amending Regulations does not nullify or invalidate the unanimous decision of the Supreme Court given on 25 May 1990. There were 2 issues which were considered by the High Court:

(a) whether there is power given to the Yang Di Pertuan Agong to make the amending Regulations with retrospective effect;

(b) whether the amended Regulations deprive the plaintiffs of the rights acquired by the Supreme Court decision given on 25 May 1990.

Held:

[1] The amending Regulations, the Essential (Protection of Depositors) (Amendment) Regulations 1991 is valid except for the new regs. 9B and 13(ii) which is now declared to be invalid to the extent that they were made to operate retrospectively.

[2] The amending Regulations, does not affect the rights acquired by the plaintiffs to be paid together with the depositors of Co-operative Central Bank Ltd., since they have already acquired that right by the Supreme Court order dated 25 May 1990 which was given before the amendments to the Regulations were made.

[3] Accordingly, a declaration was made to that effect.

[Declaration made accordingly. Costs to plaintiffs.]

[Editor's Note: The defendant has appealed to the Supreme Court *vide* Civil Appeal No. 01-15-92.]

Award referred to:
Co-operative Central Bank Ltd. v. Wong Pot Heng [1989] 1 ILR 201 (Award No. 32/89) ***(cit)***

Cases referred to:
Carltona Ltd. v. Commissioners of Works [1943] 2 All ER 560 ***(foll)***
McEldowney v. Forde [1971] AC 632 ***(foll)***
Dr. Indramani Pyarelat Gupta v. W.R. Nathu & Ors. [1963] 1 SCR 721 ***(foll)***
Phillips v. Eyre [1890] LR 6 QB 1 ***(foll)***
Eyre v. Wynn-Mackenzie [1896] 1 Ch 135 ***(foll)***
Day v. Kelland [1900] 2 Ch 745 ***(foll)***
Public Works v. Ho Po Sang [1961] AC 901 ***(foll)***
Pengarah Tanah dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn. Bhd. [1979] 1 MLJ 135 ***(foll)***
Sri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality [1969] 2 SCC 283 ***(foll)***

Legislation referred to:
Emergency (Essential Powers) Act 1979, ss. 2(1), (3), (4)
Essential (Protection of Depositors) Regulations 1986, regs. 9(1)(c), 13
Essential (Protection of Depositors) (Amendment) Regulations 1991, regs. 9A, 9B (1) (f), (4), 13, (2)
Federal Constitution, art. 66(5)
Interpretation Act 1948 & 1967 (Consolidated & Revised 1989) (Act 388), ss. 2, (3), 20, 30

For the plaintiffs - V. K. Lingam (Adam Bachek with him); M/s. V.K. Lingam & Co.
For the defendant - Zaleha bt. Zahari (N. Chandran - Watching briefs) (P. Jayasingam with him); M/s. Adnan Sundra & Low
For the bank negara - Benjamin Yean (Baharom with him); M/s. Abdul Aziz & Ong

JUDGMENT

Eusoff Chin J:

The second plaintiff Hj. Rosli bin Hj Kamaruddin had claimed in the High Court damages for wrongful termination of his contract of service with the Co-operative Central Bank Ltd. (CCB). The High Court had ordered the CCB to pay Hj. Rosli RM425,412.50 as damages. The CCB appealed to the Supreme Court, which dismissed the appeal - see [1991] 2 MLJ 37/[1991] 2 CLJ 865.

The first plaintiff, Wong Pot Heng was also an employee of the CCB. He was wrongfully dismissed from service. The Industrial Court in its Award No. 32/1989 ordered the CCB to reinstate and to pay Wong Pot Heng backwages and termination benefits of RM306,331.51 plus EPF and SPF contributions amounting to RM118,093.31. The CCB did not challenge the Industrial Court's award. Wong Pot Heng was reinstated for 2 weeks and then dismissed again by the receivers of the CCB.

On 7 March 1989, upon an application by the Central Bank (Bank Negara Malaysia), under reg. 9(1)(c) of the Essential (Protection of Depositors) Regulations 1986, (hereinafter referred to as 'the Regulations'), I had ordered two receivers to be appointed to manage the affairs and property of the CCB.

The receivers had applied to the High Court for directions as to the order of priority of payments out of the assets of the CCB. On 9 August 1989, I had made the order on the priority of payment as follows:

(a) all proper costs, charges and expenses under reg. 13 of the Essential (Protection of Depositors) Regulations 1986;

(b) deposit account and savings account balances (including all interests accrued);

(c) all other unsecured creditors not mentioned hereinbefore including, all persons claiming retrenchment, termination and/or lay-off benefits, all contractual entitlements under contracts of employment and indemnities in lieu of notice (if any), rentals in arrears, deposits paid by house purchasers (if any), withholding taxes, income taxes, utility rates, trade and other creditors [including judgement creditors (if any)].

Both the plaintiffs were therefore placed in the third category. The plaintiffs appealed to the Supreme Court. On 25 May 1990 the Supreme Court set aside the order of the High Court, and made the order that both the plaintiffs "should rank equally with the depositors immediately after the receivers" (a copy of the order is exhibited as "WR6" to the joint affidavit of Wong Pot Heng and Hj. Rosli affirmed on 26 November 1991).

Subsequent to the judgment of the Supreme Court, Bank Negara Malaysia filed an originating summons in the High Court seeking leave of the High Court to institute legal proceedings against the receivers of the CCB to obtain an order of the High Court declaring that an aggregate sum of RM523 millions made available by Bank Negara Malaysia to the CCB should be classified under the category of proper costs, charges and expenses under reg. 13 of the Regulations and/or alternatively, the amount should be classified as "rescue fund".

On 5 March 1991, having heard arguments for two days in Open Court I found that the RM523 millions were placed as deposits with receipts issued by the CCB, and I dismissed the application of Bank Negara.

Then on 25 July 1991, the Yang di Pertuan Agong on the advice of the Cabinet (see para. 2 of affidavit of the Finance Minister affirmed on 17 December 1991) made amendments to the Regulations *vide* the Essential (Protection of Depositors) (Amendment) Regulations 1991 (hereinafter referred to as the "amending Regulations"). The amending Regulations introduced a number of new Regulations, but regs. 9B and 13(2) were made to take effect retrospectively to 23 July 1986 which is the date of the coming into force of the Regulations.

Both the plaintiffs filed the present action against the Government (defendant) alleging that the Government (defendants) acted *mala fide* in advising the Yang di Pertuan Agong to pass the amending Regulations, and also that on the priority of payments, the new reg. 9B(1)(f) ousts the decision of the Supreme Court in that the manager (who includes a receiver) is given power to pay depositors in preference to the plaintiffs. They also claim that part of the amending Regulations, regs. 9B and 13(2) are invalid because these were made to have retrospective effect contrary to s. 2 of the Emergency (Essential Powers) Act 1979. Two issues need be considered here by the Court are:

a) Whether there is power given to the Yang di Pertuan Agong to make the amending Regulations with retrospective effect;

b) Whether the amended Regulations deprive the plaintiffs of the rights acquired by them by the Supreme Court decision on 25 May 1990.

As far as Parliament is concerned subject to any prohibition under the Federal Constitution, the power to legislate with retrospective effect is given to it by Article 66(5) of the Federal Constitution. But even so, the law is governed by the principle that where a statute affects

the rights of persons, or creates fresh liabilities or imposes new obligations such an Act ought not to be held to be retrospective in its operation unless the words authorising it are clear, precise and wholly free from ambiguity.

Power to make emergency Regulations, and having made them to amend them, is given to the Yang di Pertuan Agong by s. 2 of the Emergency (Essential Powers) Act 1979 and I quote the relevant provision:

> 2(1) **Subject to the provisions of this section**, the Yang di PertuanAgong may make any Regulations whatsoever (in this Act referred to as "Essential Regulations") which he considers desirable or expedient for securing the public safety, the defence of Malaysia, the maintenance of public order and of supplies and services essential to the life of the community. [Emphasis added]
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> (2) Without prejudice to the generality of the powers conferred by the preceding subsection, Essential Regulations may, so far as appear to the Yang di PertuanAgong to be necessary or expedient for any of the purposes mentioned in that subsection:
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> (j) provide for amending any written law, for suspending the operation of any written law and for applying any written law with or without modification;
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> (3) Essential Regulations may provide for empowering such authorities, persons or classes of persons as may be specified in the Regulations to make orders, rules and by-laws for any of the purposes for which such Regulations are authorised by this Act to be made, and may contain such incidental and supplementary provisions as appear to the Yang di PertuanAgong to be necessary or expedient for the purposes of the Regulations.
>
> (4) An Essential Regulation, and any order, rule, or by-law duly made in pursuance of such a regulation shall have effect notwithstanding anything inconsistent therewith contained in any written law, including the Constitution or the Constitution of any State, other than this Act or in any instrument having effect by virtue of any written law other than this Act.

There is no doubt that subject to the provisions contained in this s. 2, the Yang di Pertuan Agong can make the amending Regulations in the exercise of the powers delegated to him by Parliament through s. 2 of the Emergency (Essential Powers) Act 1979. There is also no doubt whatsoever that the Courts have jurisdiction to declare invalid a delegated legislation if in making it the person/body to whom power is delegated to make the rules or Regulations, acted outside the legislative powers conferred on him/it by the Act of Parliament under which the rules or Regulations were purported to have been made.

When the validity of a delegated legislation is questioned, Lord Greene MR in *Carltona Ltd v. Commissioners of Works* [1943] 2 All ER 560 said:

> All that the Court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the Legislature and to see that the powers are exercised in good faith. Apart from that the Courts have no power at all to enquire into the reasonableness, the policy, the sense or any other aspect of the transaction.

When faced with such issue, the Court's functions are explained as follows by Lord Diplock in *McEldowney v. Forde* [1971] AC 632 at p. 658:

Parliament makes laws and can delegate part of its power to do so to some subordinate authority. The Courts construe law whether made by Parliament directly or by a subordinate authority acting under delegated legislative powers. The view of the Courts as to whether a particular statutory or subordinate legislation promotes or hinders the common weal is irrelevant. The decision of the Courts as to what the words used in the statutory or subordinate legislation mean, is decisive. Where the validity of subordinate legislation made pursuant to powers delegated by Act of Parliament to a subordinate authority is challenged, the Court has a threefold task: first, to determine the meaning of the words used in the Act of Parliament itself to describe the subordinate legislation which that authority is authorised to make, secondly, to determine the meaning of the subordinate legislation itself and finally to decide whether the subordinate legislation complies with that description.

As regards the power of the Yang di PertuanAgong to legislate regs. 9B and 13(2) with retrospective effect, I need to look at the words used in s. 2 of the Emergency (Essential Powers) Act 1979, and the provisions in the Interpretation Act 1948 and 1967 (Consolidated and Revised 1989) (Act 388) (hereinafter referred to as the Interpretation Act). Section 20 of this Act states:

20. Subsidiary legislation may be made to operate retrospectively to any date which is not earlier than the commencement of the Act or other written law under which it is made or, where different provisions of that law come into operation on different dates, the commencement of that law under which it is made:

Provided that no person shall be made or shall become liable to any penalty in respect of any act done before the date on which the subsidiary legislation was published.

It is obvious that generally a subsidiary legislation which is defined in the Interpretation Act to include a regulation, or an amendment thereto can be made to operate retrospectively provided that the subsidiary legislation or the amendment does not affect any right, privilege, obligation or liability already acquired, accrued, or incurred under any law.

The word 'written law' is defined by the Interpretation Act to include "Acts of Parliament and subsidiary legislation made thereunder". Section 30 of the Interpretation Act states:

30(1) The repeal of a written law in whole or in part shall not:

(a) affect the previous operation of the repealed law or anything duly done or suffered thereunder; or

(b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law;

(c) xxx xxx xxx xxx xxx xxx

(d) xxx xxx xxx xxx xxx xxx

Part I of the Interpretation Act applies to the Interpretation of the Emergency (Essential Powers) Act 1979 because s. 2 of the Interpretation Act says so. But s. 2(3) of the Interpretation Act states:

2(3). Part I **shall not** apply where there is

(a) express provision to the contrary; or

(b) something in the subject or context inconsistent with or repugnant to its application.

[Emphasis added]

Section 2(3) of the Interpretation Act, therefore, clearly states that the provisions in Part I of this Act **shall be applied only if** there is no provision to the contrary, contained in the Emergency (Essential Powers) Act 1979. Both ss. 20 & 30 of the Interpretation Act are in Part I of the Act.

Section 2(1) of the Emergency (Essential Powers) Act 1979 which confers power on the Yang di Pertuan Agong to make emergency Regulations, begins with the words "subject to the provisions of this section". This clearly shows that the powers conferred on the Yang di Pertuan Agong to make essential Regulations are limited and confined only to the provisions contained in s. 2. These words impose conditions and restrictions on the powers of the Yang di Pertuan Agong when making the essential Regulations. Therefore, whenever the Yang di Pertuan Agong makes an essential regulation in the exercise of the powers conferred on him by the Emergency (Essential Powers) Act 1979, he must not act outside the powers so conferred on him by that section.

In my view the words "subject to the provisions of this section" shows Parliament's intention that, while conferring overwhelming powers on the Yang di Pertuan Agong by ss. 2(3) and (4) to make emergency Regulations, the powers must be exercised within the confines of this section only. He must not go outside the scope of this section when exercising his powers to make emergency Regulations. If, therefore, s. 2 of the Emergency (Essential Powers) Act 1979, does not confer on him the power to make emergency Regulations with retrospective operation, he is prohibited by law from making emergency Regulations with retrospective effect.

A close scrutiny of s. 2 of the Emergency (Essential Powers) Act 1979 shows that this section does not confer power on the Yang di Pertuan Agong to make an emergency regulation with retrospective effect. The question is whether the provision of s. 20 of the Interpretation Act can apply to give the Yang di Pertuan Agong power to make emergency Regulations having retrospective effect. For the reasons I have just stated, the answer is that s. 20 of the Interpretation Act does not apply to emergency Regulations made by the Yang di Pertuan Agong in exercise of the powers conferred on him by s. 2 of the Emergency (Essential Powers) Act 1979. I would only agree that the general power to make Regulations with retrospective effect given by s. 20 of the Interpretation Act, would apply to emergency Regulations made by the Yang di Pertuan Agong, if the limitation phrase "subject to the provisions of this section" is not there in s. 2 of the Emergency (Essential Powers) Act 1979. Therefore, to enable the Yang di Pertuan Agong to make these essential Regulations with retrospective effect, he must first be expressly conferred with such powers by s. 2 of the Emergency (Essential Powers) Act 1979 itself.

At the risk of repeating myself, my finding is that Parliament can always legislate retrospectively unless there is any prohibition under the Federal Constitution. By the provisions of s. 20 (but subject to s. 30) of the Interpretation Act, a person or body, on whom an Act of Parliament confers powers to make subsidiary legislation, may also generally make subsidiary legislation with retrospective effect. But where the provisions of s. 20 of the Interpretation Act has been excluded, such as has happened here, the power to make subsidiary legislation with retrospective effect must be given expressly to the person or body by the section conferring power on the person or body in clear, and unambiguous words.

In *Dr. Indramani Pyarelat Gupta v. W.R. Nathu and Ors.* [1963] 1 SCR 721 the Supreme Court of India held:

> ... If the conferment of power to make delegated Legislation *proprio vigore* carried with it to make a rule or by-law with retrospective operation, it may become an instrument of oppression. In these circumstances, it has been rightly held that the provision conferring such a power must be strictly construed and unless a statute expressly confers a power to make a rule or by-law retrospectively, it must be held that it has not conferred any such power. It is said that such a strict construction may prevent a rule making authority from making a rule in an emergency, though the occasion demands or justifies a rule with retrospective effect. The simple answer to this alleged difficulty is that if the Legislature contemplates or visualizes such emergencies, calling for the making of such rules or by laws with retrospective effect, it should expressly confer such power. It is also said that the Government can be relied upon to make such rules only on appropriate occasions. This Court cannot recognize implied powers pregnant with potentialities for mischief on such assumptions. That apart, the scope or ambit of a rule cannot be made to depend upon the status of a functionary entrusted with a rule making power. In public interest the least the Court can do is to contrue provisions conferring such a power strictly and to confine its scope to that clearly expressed therein.

The amending Regulations made on 26 July 1991 clearly state that both the new regs. 9B and 13(1) are to take effect retrospectively to the commencement date of the Regulations which is 23 July 1986. The word 'retrospective' means looking backwards or survey of the past. A retrospective legislation contemplates the past and gives to a previous transaction some different legal effect from that which it had under the law when it occurred. Every legislation which takes away or impairs a vested right acquired under existing law, or creates a new obligation, imposes a new duty or attaches a new disability in respect of a transaction or consideration already past, must be deemed to be prospective. If a written law provides that as, at a past date, the law shall be taken to have been that which it was not, that law is deemed to be retrospective even though that law does not expressly say that it is to commence from a date in the past. Retrospective is artificial, deeming a thing to be what it was not.

Willes J in *Phillips v. Eyre* [1890] LR 6 QB 1 at p. 23 said:

> Restrospective laws are, no doubt, *prima facie* of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law... Accordingly the Courts will not ascribe retrospective force to new laws affecting rights, unless by express words or necessarily implication it appears that such was the intention of the Legislature.

I would therefore hold that s. 20 of the Interpretation Act does not apply to emergency Regulations made under s. 2 of the Essential (Emergency Powers) Act 1979. Since s. 2 of the Essential (Emergency Powers) Act 1979 itself does not contain any provision empowering the Yang di Pertuan Agong to make emergency Regulations with retrospective effect, I hold that both the new regs. 9B and 13(2) inserted into the Regulations by the amending Regulations are invalid in so far as it purports to operate retrospectively.

In the circumstances, it is not necessary for me to examine whether or not the retrospective operations of both the impugned Regulations had been exercised in good faith by the defendant.

Assuming that the Yang di Pertuan Agong has power in this case to make the amending Regulations with retrospective effect, do the new Regulations affect the acquired right of the plaintiffs? I would begin first by examining a few authorities.

In *Eyre v. Wynn-Mackenzie* [1896] 1 Ch. 135, the Court of Appeal held that the Mortgagees Legal Costs Act 1895 which was passed on 6 July 1895 and which had retrospective effect could not be applied to a judgment which was given in 1893. Lindley LJ said at p. 137:

> If this application is to be regarded as an appeal on the merits, it is impossible for us to say that the judgment was wrong as the law stood at the time when it was given. It is obvious that the Act was not intended to interfere with judgements which had already been given by the Court. If we give leave to appeal in this case, we should be reopening all judgments of a similar kind which had been given prior to the passing of the Act. We cannot do that.

This was followed in *Day v. Kelland* [1900] 2 Ch. 745 at 748 when Lord Alverstone CJ held:

> In my opinion the rights of the parties were determined by the order of April 1893. Everything which has since been done in the action has been done under that order. It is said that in working out that order the plaintiff ought to have the benefit of the change in the law which was made by the Act of 1895. But to allow that would, I think, be to alter rights which were ascertained before the passing of the Act.

The Supreme Court had determined and ascertained the provision of reg. 13 of the Regulations [now renumbered as 13(1)] which states:

> 13(1) All proper costs, charges and expenses, including remuneration, of receivers and other persons **appointed under these Regulations** shall be payable out of the assets of the deposit-taker in priority to all other claims.
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> [Emphasis added]

The Supreme Court had decided that the plaintiffs must be paid when payments were to be made to the depositors. It reversed the order of the High Court that the plaintiff should be paid only after all depositors had been paid. In other words, the Supreme Court's order gave the plaintiffs the right to be paid at the same time when payments were to be made to the depositors. The order of the Supreme Court imposed an obligations on the part of the receivers to make payments to the two plaintiffs as if the plaintiffs were depositors. It is true the receivers have yet to distribute the assets of the CCB . In *Public Works v. Ho Po Sang* [1961] AC 901 at p. 922, Lord Morris in the Privy Council said:

> It may be, therefore, that under some repealed enactment a right has been given but that in respect of it some investigation or legal proceeding is necessary. The right is then unaffected and preserved.

Therefore, the rights of the plaintiff to be paid together with the depositors are preserved, notwithstanding the amendments to the Regulations.

As far as I can see, the new reg. 13(1) does not affect the decision of the Supreme Court as the words used in s. 13 are "other persons appointed **under** these Regulations". There must first be, in the Regulations, power to appoint conferred on someone, and that someone has exercised that power by making the necessary appointments. The receivers had been appointed by the Court. But the Bank Negara (Central Bank) and the Government are not "other persons appointed under these Regulations". The new reg. 13(2) states:

> 13(2) The proper costs, charges and expenses referred to in para. (1) shall include the following, regardless whether the same were paid personally by the receivers or the other persons referred to in para. (1) (hereinafter in this regulation referred to as "other persons"), or were paid by such receivers or other persons out of the assets of the deposit-taker, on behalf of the deposit-taker.

The new reg. 13(2) seeks only to enumerate what "the proper costs, charges and expenses referred to in reg. 13(1)", are.

The new reg. 9B(1)(f) & (4) however, appears to affect the subsisting order given by the Supreme Court. It states:

9B(1) Subject to these Regulations, a manager may take all action as may be necessary in relation to the business, affairs and property of the deposit-taker, or for the purpose of protecting the interests of the depositors, creditors or customers, or persons having any lawful dealings or transactions with the deposit-taker, and, without prejudice to the generality of such power, the manager may, in particular, do all or any of the following:

xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx

(f) apply the assets of the deposit-taker which are at any time in his possession, or under his custody or control, during the course of carrying on the business of the deposit-taker or the management of the affairs and property of the deposit-taker, subject to reg. 13, to meet the deposit liabilities of the deposit-taker **in preference to all other unsecured liabilities of the deposit-taker.**

[Emphasis added]

xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx

(4) The Central Bank may generally, or in any particular case, at any time issue such directions in writing as it deems fit to a manager (not being the Central Bank itself) with regard to the exercise by the manager of the powers conferred upon it under para. (1), **and the manager shall comply** with and act in accordance with such directions, and where the Central Bank is itself the manager, it may do all such things which it has the power to direct as aforesaid another manager to do.

This new reg. 9B(1)(f) confers power on the receivers to pay the depositors in preference to the plaintiffs in direct contravention of the Supreme Court decision.

It was submitted by the plaintiffs that the new reg. 9B(4) gives the Central Bank the power to issue directions generally or in any particular case, to the receiver who must comply with the directions. But I think the directions issued must in any event comply with the provisions contained in the Regulations as amended. In *Pengarah Tanah dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn. Bhd.* [1979] 1 MLJ 135, Raja Azlan Shah (Acting CJ as he then was) at p. 148 held:

> Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the Courts to intervene. The Courts are the only defence of the liberty of the subject against departmental aggression. In these days when Government Departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen; so that the Courts can see that these great powers and influence are exercised in accordance with law.

The provisions of the new reg. 9A does not affect the plaintiffs as this regulation deals with priority of payments only in the event of the CCB being wound up, liquidated, or put into bankruptcy. But even if the CCB is wound up or liquidated, the provisions of the new reg. 9A will not affect the right of the plaintiffs to be paid together with the depositors since they have already acquired that right by the order of the Supreme Court given before the amendments to the Regulations were made.

Having examined the amending Regulations, I am of the view that the amending Regulations is not intended to affect judgments or order of the Court given or made under the Regulations before the amendments.

In respect of the new regs. 9B and 13(2), the amending Regulations simply declare that these two Regulations "were deemed to have come into operation on the date of commencement of the principal Regulations" that is on 23 July 1986. Had the amending Regulations intended to affect final and binding judgments or orders made by Court under the Regulations before the amendments, it would have said so in clear words to nullify the final decrees of the Courts. In *Sri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality* [1969] 2 SCC 283, Hidayatullah CJ held that if the Legislature acting within its legislative competence wanted to neutralise or reopen a Court's decision, "it is not sufficient to declare merely that the decision of the Court shall not bind, for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances". The amending Regulations has not radically altered reg. 13 of the Regulations on which the decree of the Supreme Court proceeded, except to amplify the meaning of words existing therein.

The plaintiffs' joint application is for this Court to declare that the amending Regulations is void and of no effect, and alternatively for a declaration that the said amending Regulations does not nullify or invalidate the unanimous order of the Supreme Court dated 25 May 1990.

For the reasons given, I find that the amending Regulations, the Essential (Protection of Depositors) (Amendment) Regulations 1991, is valid except for the new regs. 9B & 13(2) which I now declare to be invalid to the extent that they were made to operate retrospectively. I further find that the amending Regulations does not affect the rights acquired by the plaintiffs in the Supreme Court order dated 25 May 1990, and I make the declaration to that effect. I award costs to the plaintiffs.

Also found at [1992] 3 CLJ 1497